

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RITA FRAZIER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 10-15120

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

MICHAEL HLUCHANIUK
UNITED STATES MAGISTRATE JUDGE

**OPINION AND ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(1) DISMISSING CASE UNDER RULE 41(b), AND, IN THE
ALTERNATIVE
(2) GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT
(3) DENYING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT FILED FEBRUARY 16, 2012**

On February 9, 2012, the Magistrate Judge issued a Report and Recommendation (R&R) to the Court dismissing Plaintiff's Complaint under Fed.R.Civ.P. 41(b), and in the alternative, Granting Defendant's Motion for Summary Judgment.

That R&R stated that any objections to the R&R must be filed within 14 days, and that failure to file specific objections constitutes a waiver of any further right of appeal.

Plaintiff did not file any timely objections. Instead, on February 16, 2012, Plaintiff filed a tardy Motion for Summary Judgment, that did not object to the findings in the R&R.

Thus, as the February 9, 2012 R&R states, Plaintiff did not timely file a motion for summary judgment, did not respond to the Court's May 12, 2011 order to show cause by May 26, 2011, and did not file a motion for summary judgment by May 26, 2011. The show cause order

specifically provided that Plaintiff's failure to timely or adequately respond in writing to that order by May 26, 2011 would result in a recommendation of dismissal of Plaintiff's case.

This Court notes that (1) Plaintiff filed the instant claim on April 21, 2008; that (2) the claim was initially approved by the Commissioner on August 20, 2008; (3) that Plaintiff requested a hearing and received one of August 13, 2009 at which Plaintiff appeared with counsel; (4) that Administrative Law Judge (ALJ) William C. Thompson, Jr., on December 21, 2009, found that Plaintiff was not disabled, (5) that Plaintiff requested a review of this decision on January 26, 2010, and (6) that on October 29, 2010, the Appeals Council denied Plaintiff's request for review.

On December 23, 2010, Plaintiff filed the instant suit seeking judicial review of the Commissioner's unfavorable decision disallowing benefits.

This Court referred this matter to the Magistrate Judge for review of the Commission's decision denying Plaintiff's claim for a period of disability, disability insurance and supplemental security income benefits.

Thereafter, on May 11, 2011, pursuant to the Court's scheduling order, Defendant filed a timely motion for summary judgment. Plaintiff did not file a timely motion for summary judgment as permitted by the scheduling order dated March 16, 2011.

On May 12, 2011, the Court issued an order for Plaintiff to show cause by May 26, 2011, why she failed to comply with the scheduling order, or to file her motions for summary judgment by that same date. Plaintiff did neither.

That show cause order specifically stated that Plaintiffs' failure to timely or adequately respond to that order by May 26, 2011 will result in a recommendation of dismissal of Plaintiff's case.

Plaintiff did nothing until filing a two page Motion for Summary Judgment on February 16, 2012. That motion states that she thought the instant case had been dismissed on May 11, 2011 when the show cause was issued for her to file a response on May 26, 2011. Plaintiff's summary judgment motion further states that she filed another case with the Social Security Office for disability, with an ALJ hearing date on May 4, 2012. Plaintiff further states that she was not aware this case was still active until February 12, 2012.

This Court and the Magistrate Judge have contacted Plaintiff time and again. One year ago Plaintiff was released from a hospital, but has done nothing to respond to this Court's requests time and again for her to deal with this case other than file a Motion for Summary Judgment which does not undermine any of the factual conclusions in the Magistrate Judge's R&R recommending the granting of Defendant's Motion for Summary Judgment..


This Court concludes that Plaintiff's case will be dismissed on the two grounds stated in the Magistrate Judge's R&R.

- (1) Fed.R.Civ.P. 41(b) dismissal, for failure to prosecute this case, despite multiple orders/opportunities by the Court, as noted, extensively, in the R&R.
- (2) In the alternative; Granting Defendants Motion for Summary Judgment based on this Court's review of the record evidence, the R&R, the ALJ's decision, and the Commission's motion for summary judgment.

The Court further denies Plaintiff's tardy motion for summary judgment filed on February 16, 2012.

SO ORDERED.

DATED: 3-8-12



PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE